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SOUTHWEST RESEARCH AND INFORMATION CENTER

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July 14, 2003

Steve Zappe
New Mexico Environment Department
2905 Rodeo Park Drive, Building 1
Santa Fe, NM 87505



RE: WIPP Class 3 Permit Modification Request for Construction and Use
of Hazardous Waste Disposal Units

Dear Steve,

Southwest Research and Information Center (SRIC) requests that the Class 3 modification request be denied because it is grossly inadequate and incomplete and does not meet the regulatory requirements to be approved. Regulations under the New Mexico Hazardous Waste Act (20 NMAC 4.1.900, incorporating 40 CFR 270.42(c)(6)) provide that NMED may deny a Class 3 modification request.

The WIPP permit was approved on October 27, 1999, following, among other things, more than four years of NMED review, public comment, 19 days of public hearings, and a hearing transcript and hearing exhibits exceeding 10,000 pages. The permit allows use of three Underground Hazardous Waste Disposal Units (HWDUs) and specifies maximum capacities and container equivalents in those HWDUs. Module IV.A.1.b. Through this modification request, the permittees would change the permit to allow more than a doubling of the capacity of the facility by allowing use of four additional HWDUs. Request, page 1; Attachment O, page 4 of 7.

Such a request is totally inappropriate. The modification would result in innumerable changes to many aspects of the permit, which are not included in the modification request. For example, the "accelerated cleanup" program that supposedly is the basis for the request will affect surface storage capacities, container storage, approved shipping and storage containers, and other aspects of Module III of the permit. Yet, no changes are being proposed in Module III. That "accelerated cleanup" program also assumes NMED approval of the Centralized Characterization Facility (CCF), which SRIC and many other people have strongly opposed, NMED has not approved, and the permittees have withdrawn. See *Draft Transuranic Waste Performance Management Plan* (WIPP PMP; footnote 17, page A-7 of the request; see also pages A-11 and A-12).

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That "accelerated cleanup" plan will also require changes in various aspects of Module II of the permit, including the Waste Analysis Plan, audit and surveillance process, and personnel training, which are not included in the modification request. The "accelerated cleanup" program also includes remote-handled (RH) waste, which is not included in the modification request. Moreover, the discussion of RH waste on pages A-14 and A-15 does not include many relevant issues, including waste handling and storage issues that affect HWDU procedures.

Thus, allowing the proposed large expansion in the number of HWDUs will affect many aspects of the WIPP Permit, many more than those included in the grossly incomplete modification request. The appropriate response is for NMED to deny the request and instruct DOE to submit a new class 3 modification request that includes all of the changes that would be required to the permit.

The need for this modification has not been established. The fact that permittees have "plans" is not new. Historically, those plans have been inaccurate. And rather than being conservative, those plans have been wildly overly optimistic. The existing 10-year permit allows for the disposal of 54,000 cubic meters of waste in three HWDUs. Table IV.A.1. During the first one-third of that timeframe, 10,496 cubic meters was disposed. Request, page A-8. Thus, less than 20 percent of the permitted disposal has occurred. Such actual results do not provide a basis for adding additional HWDUs.

For the permittees to assume, and NMED to accept, that new "plans" or "planning tools" will be carried out, not only has no basis in historic practice, but it is inconsistent with more recent events. For example, on March 4, 2003, the state of Washington sued DOE to prevent various shipments from coming to Hanford that are included in the WIPP PMP. See <http://www.wa.gov/ago/hanford/>. That ongoing litigation has delayed shipments and could substantially change the WIPP schedule. On March 31, 2003, the Idaho Federal District Court issued an order in the State of Idaho's lawsuit regarding all transuranic waste at INEEL. http://www.id.uscourts.gov/ECM/dc_images/_1000NCRFL10130369.pdf. That decision is contrary to both the WIPP and INEEL PMPs and likely will require major changes in what wastes come to WIPP and the schedule for those shipments. Last week, DOE delayed shipments from the Nevada Test Site (NTS) to WIPP, so that portion of the WIPP PMP related to NTS will not occur and cannot be the basis for the modification request. These examples are only indicative of future litigation and other actions that will have the effect of delaying and changing those plans and schedules. Thus, the current shipping and mining/emplacement schedules (which permittees do not want made part of the permit) do not establish the need for the modification, nor the basis upon which NMED should approve it.

Regarding matters included in the modification request, there are many inadequacies and much incomplete information. For example,

* the request does not include a discussion of why the time required to mine a panel could not be accelerated, thereby requiring less than the year+ timeframes included in request. Page D-2.

* the request does not include any mechanism for NMED to prevent or delay mining or use of an HWDU if there are schedule changes or delays.

* the request does not include requirements or procedures to avoid the situation that occurred with panel 1, when that panel was mined too far in advance of waste emplacement. But the panel mining was based on the then existing schedule, which was erroneous. Thus, the actual historic practice is that schedules are too ambitious, rather than conservative. Thus, the permittees assertion that the current "estimates are conservative" (page A-17) cannot be accepted.

Thus, the modification request is clearly not protective of public health and the environment, as required by the Hazardous Waste Act and its regulations. Section 74-4-4.A, NMSA.

SRIC again urges NMED to deny this modification request. NMED also should request that the permittees meet with NMED and public representatives to discuss a more appropriate modification to deal with permittees' concerns that the permit modification process related to HWDUs might slow waste disposal at WIPP. SRIC would participate in such a process which could result in a permit modification request that could meet the requirements of the regulations and the permittees' needs.

Thank you very much for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "Don Hancock", written in a cursive style.

Don Hancock